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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit))
religious corporation,))

Plaintiff,))

vs.))

GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION))
a California for-profit))
corporation; DOES 1 through 100,))
inclusive,))

Defendants.))

No. 157 680

DEFENDANTS'
OPPOSITION TO MOTION
FOR SUMMARY ADJUDICATION
OF FOURTH, SIXTH AND
ELEVENTH CAUSES OF ACTION

Date: 1/27/95
Time: 9:00 a.m.
Dept: One
Trial Date: May 18, 1995

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18) Dept: One
19) Trial Date: May 18, 1995

20 I. INTRODUCTION

21 Scientology seeks summary adjudication against defendant
22 Armstrong for his having executed two declarations that were used
23 in ongoing litigation and having provided information to the media
24 on two occasions pertaining to the instant litigation which
25 Scientology continues to prosecute against him. Scientology
26 claims that such conduct violates the settlement contract and
27 should subject Armstrong to an award of \$150,000 in liquidated
28 damages.

1 Armstrong does not deny having engaged in the conduct
2 charged, however, liability should not attach thereto because a
3 private contract cannot override the public interests recognized
4 at common law and by statute enacted to protect the administration
5 of justice. Thus, based upon the litigant's privilege Armstrong
6 is immune from liability for having executed them.

7 As to the statements to CNN and American Lawyer, there is no
8 violation because such statements referred to the instant
9 litigation which is beyond the scope of the settlement contract.

10 **II. STATEMENT OF FACTS**

11 **A. The Background Litigation**

12 This case arises out of a battle between former Scientologist
13 Gerald Armstrong and the Scientology organization. In substance,
14 while a Scientologist Armstrong discovered a wealth of documents
15 that established that Scientology founder, L. Ron Hubbard, had
16 consistently lied about his past accomplishments and credentials,
17 and was not a man of religion but instead ruled Scientology with
18 an iron hand by means of the notorious "Fair Game Policy."

19 (Separate Statement No. 21; Ex. 1 (A) at 7:9-14, 8:18-24) ^{1/}
20 Having been labelled "Fair Game" after leaving Scientology,
21 Armstrong, who had been Hubbard's archivist, obtained from Omar
22 Garrison, Hubbard's biographer, documents which exposed Hubbard's

23
24 ¹ Fair Game is the policy to be enforced against "enemies"
25 of Scientology or "suppressive persons." (Allard v. Church of
26 Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1;
27 Church of Scientology of California v. Armstrong (1991) 232
28 Cal.App.3d 1060, 1067) [Defendant Armstrong declared suppressive
person, labelled an enemy of the church and subjected to fair game
policy.] According to the Fair Game Policy, such persons upon
whom it is imposed, "[m]ay be deprived of property or injured by
any means by any Scientologist without any discipline of the
Scientologist. May be tricked, sued or lied to or destroyed."

1 lies so as to protect himself, and sent these documents to the
2 lawyer who would defend him, Michael Flynn. (Ex. 1 (A) at 4:10-
3 21; 10:7-12; 14:6-21)

4 On August 2, 1982, Scientology sued Armstrong in LASC No.
5 C420153 ("Armstrong I") for conversion of the documents.
6 Armstrong cross-complained for harassment. Scientology's
7 complaint was tried before the Honorable Paul G. Breckenridge who
8 found what Armstrong said about Scientology was true. (Separate
9 Statement No. 20; Exhibit 1 (A) at 7:9-14, 8:18-24) Thereafter,
10 Armstrong's cross-complaint was settled.

11 **B. The Settlement Agreement**

12 Provisions of the settlement agreement required Armstrong to
13 assist in obtaining the return of Scientology documents including
14 certain tapes in United States v. Zolin, (Scientology's Ex. 1 (B)
15 at 9-10, ¶ 7-L-c) ^{2/} to not assist or cooperate with (Id. at 10,

16
17 ² In United States v. Zolin (1989) 109 S.Ct. 2619, the
18 Court addressed whether the attorney-client privilege between
19 Scientology and some of its attorneys should be abrogated on the
20 basis "that the legal service was sought or obtained in order to
21 enable or aid the client to commit or plan to commit a crime or
22 tort." Id. at 2630. In Zolin, the Supreme Court reversed the
23 Ninth Circuit's ruling in United States v. Zolin (9th Cir. 1987)
24 809 F.2d 1411 that the Government had not made a sufficient
25 showing that there had been "illegal advice ... given by
26 [Scientology] attorneys to [Scientology] officials" to invoke the
27 crime-fraud exception to the attorney-client privilege. Upon
28 reversing and remanding, the Supreme Court ordered the Ninth
29 Circuit to review partial transcripts of the tape recording
30 sought by the IRS in a criminal investigation of Scientology to
31 determine whether the crime-fraud exception to the privilege
32 applied. On remand, the Ninth Circuit Court held:

33 "The partial transcripts demonstrate that the
34 purpose of the [Mission Corporate Category Sort Out]
35 project was to cover up past criminal wrongdoing. The
36 MCCS project involved the discussion and planning for
37 future frauds against the IRS, in violation of 18 U.S.C.
38 § 371. [citation.] The figures involved in MCCS admit
(continued...)

1 ¶ 7-G), voluntarily testify for any adverse Scientology litigant,
2 governmental or otherwise, and not be amenable to process service
3 (Id. at 10-11, ¶ 7-H. The settlement also called for Armstrong
4 not to oppose the appeal of the Breckenridge decision (Id. at 3-4,
5 ¶ 4 (A) & (B). Unbeknownst to Armstrong, part of the settlement
6 included side agreements wherein Scientology agreed to a limit of
7 damages on retrial of \$25,000.00, and when paid, to secretly
8 reimburse Armstrong's counsel. (Ex. 1 at ¶ 9)

9 Armstrong objected to the settlement, referring to it as
10 another act of fair game, however he was subjected to duress by
11 his attorney to sign the same. Part of the duress included
12 statements from his attorney that the provisions that Scientology
13 seeks to enforce in this lawsuit were not enforceable. (Separate
14 Statement No. 5; Ex. 1 at ¶¶ 1-8)

15 C. Armstrong's Verified Answer

16 In his Sixth Affirmative Defense to Scientology's complaint
17 Armstrong asserted that he signed the contract on the basis of
18 fraud and deceit. (Separate Statement No. 25; Scientology's
19 Request for Judicial Notice, Ex. B at 23-26, ¶82)

20 In his Twenty-Fourth Affirmative Defense to Scientology's
21 complaint Armstrong asserted that the liquidated damages
22 provisions was intended to act as a penalty. (Separate Statement
23 No. 25; Id., Ex. B at 33, ¶100)

24 _____
25 ²(...continued)

26 on the tapes that they are attempting to confuse and
27 defraud the U.S. Government. The purpose of the crime-
28 fraud exception is to exclude such transactions from the
protection of the attorney-client privilege."
(United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. cert.
denied, Church of Scientology v. United States (1991) 111 S.Ct.
1309)

1 In his Forty-Third Affirmative Defense to Scientology's
2 complaint Armstrong asserted that his conduct was privileged.
3 (Separate Statement No. 25; Id., Ex. B at 119, ¶40)

4 D. The Alleged Breaches Of The Settlement Contract

5 1. The Declaration In The Aznaran Litigation

6 On April 1, 1988, Vicki J. Aznaran and Richard N. Aznaran
7 sued Scientology in United States District Court, Central District
8 of California, case No. CV88-17886-WDK (Ex) wherein they alleged
9 that they were fraudulently recruited into Scientology and
10 thereafter subjected to brainwashing, harsh labor regimes,
11 deprivation of liberty, and submission to Scientology as part of a
12 slave-like work force. (Plaintiff's Request for Judicial Notice,
13 Ex. E at 4:19-6:6; 19:14-20:16)

14 On July 29, 1991, Scientology filed its Notice of Motion and
15 Motion To Exclude Testimony Of Plaintiffs' Designated Expert,
16 Margaret Singer. (Defendant's Request for Judicial Notice, Ex. A)
17 The grounds for the motion were that brainwashing (also known as
18 coercive persuasion) lacks scientific basis, that for the jury to
19 determine whether or not the Aznarans had been brainwashed would
20 require the jury to evaluate the religious belief and practices of
21 Scientology which is prohibited by the First Amendment, that Dr.
22 Singer's alleged bias against Scientology made her testimony
23 unreliable and was lacking in probative value. (Separate
24 Statement No. 27; Id. at 2:11-3:3)

25 On August 26, 1991 the Aznarans filed their opposition to
26 Scientology's motion. (Defendant's Request for Judicial Notice,
27 Ex. B) In the body of the Aznarans' opposition, they made
28 reference to the disingenuousness of Scientology's effort to

1 suppress testimony pertaining to brainwashing because in 1955 L.
2 Ron Hubbard professed to be an expert in brainwashing practices.
3 (Separate Statement Nos. 28, 29; Id. at 35:5-13) The Aznarans
4 relied on Armstrong's declaration which authenticated two
5 documents disseminated by Hubbard to substantiate these points.
6 (Separate Statement No. 29; Defendant's Request for Judicial
7 Notice, Ex. C at 1:27-2:9) The Court ultimately ruled in favor of
8 the Aznarans. (Separate Statement No. 30; Defendant's Request for
9 Judicial Notice, Ex. D)

10 Scientology has sued Armstrong for executing said declaration
11 and now seeks summary judgment against Armstrong in that regard.
12 He is protected by the litigant's privilege.

13 **2. The Declaration In The Mayo Litigation**

14 On May 27, 1992, in Religious Technology Center v. Scott,
15 United States District Court, Central District of California, CV
16 85-711 JMI (Bx); CV 85-7197 JMI (Bx) filed defendants their
17 opposition to counter-defendants' motion for a protective order.
18 (Separate Statement Nos. 33-35; Defendant's Request for Judicial
19 Notice Ex. F) The opposition papers made direct reference to the
20 testimony of Laurel Sullivan in the Armstrong I litigation (Id. at
21 4:18-5:24; 8:1-20) and was supported by the Declaration of Gerald
22 Armstrong which is at issue in the instant motion. Armstrong's
23 declaration authenticated the transcript of Sullivan trial
24 testimony in Armstrong I.

25 Scientology has sued Armstrong for executing said declaration
26 and now seeks summary judgment against Armstrong in that regard.
27 He is protected by the litigant's privilege.

28

1 3. Contacts With CNN And American Lawyer

2 On March 20, 1992 the Honorable Michael B. Dufficy granted
3 CNN's request to conduct film and electronic media coverage of a
4 hearing in this case. (Separate Statement No. 31, Defendant's
5 Request for Judicial Notice, Ex. E) Scientology consented to said
6 taping through the representation of Andrew H. Wilson to the
7 Court. (Separate Statement No. 31) CNN thereafter taped the
8 entire proceeding and interviewed Scientology's lawyers in the
9 hallway after the hearing after which CNN interviewed Armstrong at
10 his attorney's office. (Separate Statement No. 31) The single
11 comment Armstrong made was "I'm an expert in the
12 misrepresentations Hubbard has made about himself from the
13 beginning of Dianetics until the day he died." This is consistent
14 with Judge Breckenridge's decision and the material in Bent
15 Corydon's book, Madman or Messiah? (Separate Statement No. 31)

16 When Gerald Armstrong was interviewed by William Horne of
17 American Lawyer, he said nothing to Horne aside from what Judge
18 Breckenridge had written in his Memorandum of Intended Decision.
19 (Separate Statement No. 32)

20 **III. LEGAL ARGUMENT**

21 **A. Armstrong's Declarations And Statements To The Press**
22 **Are Protected By The Litigant's Privilege**

23 The litigation privilege has a long history. It is based
24 upon (1) the idea that the purpose of judicial proceedings is to
25 ascertain the truth and (2) the recognition that openness of
26 communication is essential to finding the truth. Thus, in order
27 to find the truth, the participants in judicial proceedings -
28 judges, lawyers and witnesses - must be protected from

1 intimidation that might flow from those unhappy with an adverse
2 judicial consequence. The result in an immunity at common law and
3 in the State of California, a statutory privilege.

4 In the words of one 19th-century court, lawsuits against
5 witnesses based upon their testimony are prohibited because, "the
6 claims of the individual must yield to the dictates of public
7 policy, which requires that the paths which lead to the
8 ascertainment of truth should be left as free and unobstructed as
9 possible." (Calkins v. Sumner (1860) 13 Wis. 193, 197 as quoted
10 in Briscoe v. LaHue (1983) 460 U.S. 325, 333)

11 Thus, in his opinion concurring in the judgment of the Court
12 in Imbler v. Pachtman (1976) 424 U.S. 409, Justice White stated
13 that such immunity was "based upon the policy of protecting the
14 judicial process." (Id. at 439) This protection extends to all
15 participants in such process.

16 The reasons for this rule are also substantial. It is
17 precisely the function of a judicial proceeding to
18 determine where the truth lies. The ability of the
19 courts, under carefully developed procedures, to
20 separate truth from falsity, and the importance of
21 accurately resolving factual disputes in criminal (and
22 civil) cases are such that those involved in judicial
23 proceedings should be 'given every encouragement to make
24 a full disclosure of all pertinent information within
25 their knowledge.'"

26 (Ibid.)

27 The common law's protection for essential judicial
28 participants formed part of a "cluster of immunities protecting
the various participants in judge-supervised trials," which
stemmed "from characteristics of the judicial process." (Butz v.
Economou (1978) 438 U.S. 478, 512) The common law recognized that

1 controversies sufficiently intense to erupt in
2 litigation are not easily capped by a judicial decree.
3 The loser in one forum will frequently seek another ...
4 Absolute immunity is thus necessary to assure that
5 judges, advocates and witnesses can perform their
6 respective functions without harassment or intimidation.

7 (Ibid.)

8 Therefore, the common law provided absolute immunity from
9 subsequent damages liability for all persons who were integral
10 parts of the judicial process in order to protect against
11 intimidation and censorship. (Briscoe v. LaHue, supra., 460 U.S.
12 at 335)

13 A witness' apprehension of subsequent damages liability
14 might induce two forms of self-censorship. First,
15 witnesses might be reluctant to come forward to testify.
16 [citation] And once a witness is on the stand, his
17 testimony might be distorted by the fear of subsequent
18 liability. [citation] Even within the constraints of
19 the witness' oath there may be various ways to give an
20 account or to state an opinion. These alternatives may
21 be more or less detailed and may differ in emphasis and
22 certainty. A witness might who knows that he might be
23 forced to defend a subsequent lawsuit, and perhaps pay
24 damages, might be inclined to shade his testimony in
25 favor of the potential plaintiff, to magnify
26 uncertainties, and thus to deprive the finder of fact of
27 candid, objective and undistorted evidence.

28 (Id. at 333)

The common law absolute immunity was one of a number of
"truthfinding safeguards of the judicial process" (Id. at 345)
because the participation of witnesses in the judicial process is
"indispensable." (Id. at 346)

In California, the litigation privilege is derived from Civil
Code section 47 (2). It states that a "privileged communication
or broadcast is one made ... In any ... judicial proceeding ..."

In Silberg v. Anderson (1990) 50 Cal.3d 205, Justice Kaufman
stated that the litigant's privilege is an essential prophylactic

1 ingredient required to ward off corruption in litigation. He
2 said:

3 The principal purpose of section 47(2) is to afford
4 litigants and witnesses [citation omitted] the utmost
5 freedom of access to the courts without fear of being
6 harassed subsequently by derivative tort [or contract]
7 actions. [citations omitted.]

8 Section 47(2) promotes effectiveness of judicial
9 proceedings by encouraging "open channels of
10 communication and the presentation of evidence" in
11 judicial proceedings. [citations omitted.] A further
12 purpose of the privilege "is to assure utmost freedom of
13 communication between citizens and public authorities
14 whose responsibility is to investigate and remedy
15 wrongdoing." [citations omitted.] Such open
16 communication is "a fundamental adjunct to the right of
17 access to judicial and quasi-judicial proceedings."
18 [citation omitted.] Since the "external threat of
19 liability is destructive of this fundamental right and
20 inconsistent with the effective administration of
21 justice" (citation omitted), courts have applied the
22 privilege to eliminate the threat of liability for
23 communications made during all kinds of truth-seeking
24 proceedings: judicial, quasi-judicial, legislative and
25 other official proceedings. . . Thus, witnesses should
26 be free from the fear of protracted and costly lawsuits
27 which otherwise might cause them to distort their
28 testimony or refuse to testify altogether. [citations
omitted]"

(Id. 50 Cal.3d at pp. 213-14.)

There is no stronger public policy than that embodied in
Civil Code section 47 (2). The litigant's privilege lies at the
core of the integrity of our judicial system. It cannot be
bought-off or otherwise eliminated. The policy favoring
settlement, although strong, cannot supersede the policy of truth-
seeking in litigation. Otherwise, the "truth" would be bought and
sold in the same manner as were African Americans in Colonial
America.

The privilege is absolute in nature. (Id. at p. 215)
Therefore, any communication (1) made in judicial or quasi-

1 judicial proceedings; (2) by litigants or other participants
2 authorized by law; (3) to achieve the objects of the litigation;
3 (4) that has some connection or logical relation to the action is
4 completely privileged. (Id. at p. 212.)

5 Armstrong's declarations in both the Aznaran and Mayo
6 litigation were made in judicial proceedings as a witness.

7 **B. To The Extent That The Settlement Contract Purports To**
8 **Eviscerate The Litigant's Privilege By The Payment Of**
9 **Money Or Imposition Of Intimidation, It Is Void Because**
10 **It Violates Public Policy.**

11 A party need not plead the illegality as a defense and
12 the failure to do so constitutes no waiver. In fact, the point
13 may be raised at any time, in the trial court or on appeal, by
14 either the parties or on the court's own motion. (LaFortune v.
15 Ebie (1972) 26 Cal.App.3d 72, 75; Lewis & Queen v. M.M. Ball Sons
16 (1957) 48 Cal.2d 141, 147-148)

17 The object of a contract must be lawful. (Civil Code §§
18 1550, 1596) If the contract has a single object, and the object
19 is unlawful, the entire contract is void. (Civil Code § 1598) It
20 is an obstruction of justice to conceal or suppress relevant
21 evidence. (Witkin, California Criminal Law (2d ed. 1988), Vol. 2,
22 section 1132, at p. 1311; Penal Code sections 136, 136.1 and 138;
23 18 U.S.C. § 201(b)(3); 18 U.S.C. § 201 (c)(2); Williamson v.
24 Superior Court (1978) 21 Cal.3d 829, 836-37; People v. Pic'l
25 (1982) 31 Cal.3d 731, 183 CR 685; Mary R. v. B&R Corporation
26 (1983) 149 Cal.App.3d 308, 196 CR 871)

27 The underlying settlement agreement in this case is illegal
28 because it was designed to subvert the litigant's privilege so as
to suppress facts discrediting Scientology, which thus suppressed

1 would obstruct justice.

2 In Brown v. Freese (1938) 28 Cal.App.2d 608, the California
3 Court of Appeal adopted section 557 of the Restatement of the Law
4 of Contracts prohibiting as illegal those agreements which sought
5 to suppress the disclosure of discreditable facts. The court
6 stated:

7 "A bargain that has for its consideration the
8 nondisclosure of discreditable facts . . . is illegal.
9 . . . In many cases falling within the rule stated in
10 the section the bargain is illegal whether or not the
11 threats go so far as to bring the case within the
12 definition of duress. In some cases, moreover,
13 disclosure may be proper or even a duty, and the offer
14 to pay for nondisclosure may be voluntarily made.
15 Nevertheless the bargain is illegal. Moreover, even
16 though the offer to pay for nondisclosure is voluntarily
17 made and though there is no duty to make disclosure or
18 propriety in doing so, a bargain to pay for
19 nondisclosure is illegal."

20 (Emphasis added. Brown 28 Cal.App.2d at 618)

21 Thus, where a contract is made either (1) to achieve an
22 illegal purpose, or (2) by means of consideration that is not
23 legal, the contract itself is void. (Witkin, Summary of
24 California Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396)

25 Thus, the court will look through provisions that may appear
26 valid on their face, and with the aid of parol evidence, determine
27 that the contract is actually illegal or is part of an illegal
28 transaction. (Lewis & Queen, 48 Cal.2d at 148; Owens v. Haslett
(1950) 98 Cal.App.2d 829, 221 P.2d 252, 254; Eggleston v.
Pantages (1918) 103 Wash. 458, 175 P. 34, 36; Maryland C. Co. v.
Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492; Fong v. Miller
(1951) 105 Cal.App.2d 411, 414-15. Morey v. Paladini (1922) 187
Cal. 727, 738; Tiedje v. Aluminum Paper Milling Co. (1956) 46
Cal.2d 450, 454)

1 In Fong v. Miller, supra, enforcement of a settlement
2 agreement was denied.

3 "Appellants bitterly complain that the court's
4 action leaves Respondent unjustly enriched. The
5 complaint is a familiar one, it is generally made by
6 those who, deeming themselves wronged by their companion
7 in illegal ventures, find themselves denied of any right
8 to enforce their unlawful agreements. Their pleas have
9 always been unavailing. This rule is not generally
10 applied to secure justice between parties who have made
11 an illegal contract, but from regard for a higher
12 interest -- that of the public, whose welfare demands
13 that certain transactions be discouraged."

14 (Id. at 105 Cal.App.2d at pp. 414-415)

15 In Tappan v. Albany Brewing Co. (1989) 80 Cal. 570, 571-72
16 the California Supreme Court stated:

17 "It was contended by the Respondent that this was
18 nothing more than a payment of a sum of money by way of
19 a **compromise of litigation**, and that such contracts have
20 been upheld. We do not so construe the agreement. It
21 was a promise to pay . . . for the **concealment of a fact**
22 from the court and the parties material to the rights of
23 said parties, and which it was her duty to make known.
24 Such a contract is against public policy."

25 Were the Court to grant Scientology's motion for summary
26 adjudication, it would be giving effect to a contract whose
27 purposes include the subversion of the litigant's privilege. It
28 is against the law to give greater value to a private agreement
whose purpose is to subvert values of a higher order which are
deliberated intended to protect truth-seeking in the judicial
process.

29 **C. Armstrong's Press Contacts Do Not Violate The Contract**

30 The contract does not limit Armstrong from discussing either
31 Judge Breckenridge's decision or his present litigation. Since
32 both the CNN video piece and the American Lawyer article address
33 the instant litigation and discuss matters that have been
34 generally disseminated, there is no construable violation of the
35 settlement contract. (Separate Statement No. 31-33)

1 D. The Liquidated Damages Provision Is Invalid.

2 On the subject of liquidated damages, paragraph 7-D of the
3 settlement contract states:

4 "Plaintiff agrees that if the terms of this paragraph
5 are breached by him, that CSI and the other Releasees
6 would be entitled to liquidated damages in the amount of
7 \$50,000 for each such breach. ... The amount of
8 liquidated damages herein is an estimate of the damages
9 that each party would suffer in the event this Agreement
10 is breached. The reasonableness of the amount of such
11 damages are hereto acknowledged by Plaintiff."

12 Armstrong never agreed to said liquidated damages provision
13 and signed the settlement contract only because attorney Michael
14 Flynn had told him that "it was not worth the paper it was written
15 on" and attorney Michael Walton told him that in order to be
16 enforceable, the provision would have to be mutual. (Separate
17 Statement No. 5)

18 Furthermore, there were no discussions regarding said
19 provision. Indeed, aside from attorney's fee Church of
20 Scientology International secretary Lynn Farny was unable to point
21 to anything specific upon which the provision was based.
22 (Separate Statement No. 10)

23 In order for a liquidated damages provision to be valid, "the
24 parties - as distinguished from only one of the parties - made a
25 reasonable endeavor to estimate a fair average compensation for
26 any loss that may be sustained." (United Savings & Loan Ass'n of
27 Calif. v. Reeder Development Corp. (1976) 57 Cal.App.3d 282, 299-
28 300)

 Since there is no proof that any such effort was made herein,
there is a question of fact as to the enforceability of the
liquidated provisions.

1 E. Armstrong Did Not Have The Benefit Of Objective Counsel

2 Sections 1569 (1) and (3) of the California Civil Code
3 defines duress as the (1) "[u]nlawful confinement of the person of
4 the party, . . ." or (2) "[c]onfinement of such person, lawful in
5 form, but fraudulently obtained, or fraudulently made unjustly
6 harassing or oppressive." The cases, however, have established
7 much broader definitions, and consequently, the language of the
8 decisions can rarely be reconciled with the statutory language.
9 For example, in Harlan v. Gladding, McBean & Co. (1907) 7 Cal.App.
10 49, duress means a condition of mind produced by improper external
11 pressure or influence that practically destroys the free will of a
12 person and causes him to do an act or enter into a contract not of
13 his own volition. In Sistrom v. Anderson (1942) 51 Cal.App.2d
14 213, duress is effectuated by an unlawful threat which overcomes
15 the will of the person threatened and induces him to do an act
16 that he is not bound to do and would not otherwise have done.
17 Steffen v. Refrigeration Discount Corp. (1949) 91 Cal.App.2d 494,
18 states that the test of duress, at its harshest, is what would
19 have influenced the conduct of a reasonable man. Indeed, the
20 modern tendency is to find duress wherever one, by the unlawful
21 act of another, is induced to make a contract under circumstances
22 which deprive him of the exercise of free will. (see Keithley v.
23 Civil Service Board (1970) 11 Cal.App.3d 443; Balling v. Finch
24 (1962) 203 Cal.App.2d 413; Gross v. Needham (1960) 184 Cal.App.2d
25 446; Lewis v. Fahn (1952) 113 Cal.App.2d 95; Sistrom, 51
26 Cal.App.2d at 213) Under this standard, duress is to be tested,
27 not by the nature of the threat, but by the state of mind induced
28 in the victim. (Balling, 203 Cal.App.2d at 413; Lewis, 113

1 Cal.App.2d at 95)

2 In the case at bar, the agreement was made under duress and
3 is, thus, voidable. Specifically, in Paragraph 11-A of the
4 agreement: "The parties to this Agreement acknowledge . . . [t]hat
5 all parties enter into this Agreement freely, voluntarily,
6 knowingly and willingly, without any threats, intimidation or
7 pressure of any kind whatsoever and voluntarily execute this
8 Agreement of their own free will." Armstrong described the duress
9 and undue influence to which he was subjected as soon as he had
10 arrived in Los Angeles and was pressured into signing the
11 agreement. (Separate Statement No. 5)

12 Accordingly, duress exists to void the agreement.

13 Rule 5-102 of the Rules of Professional Conduct states:

14 (A) A member of the State Bar shall not accept
15 professional employment without first disclosing his
16 relation, if any, with the adverse party, and his interest,
17 if any in the subject matter of the employment. A member of
18 the State Bar who accepts employment under this rule shall
19 first obtain the client's written consent to such employment.

18 (B) A member of the State Bar shall not represent
19 conflicting interest, except with the written consent of all
20 parties concerned.

20 In the Armstrong settlement, Armstrong was represented by
21 attorney Michael Flynn. Although Flynn did tell Armstrong that he
22 was settling his own litigation against Scientology, ³/ Flynn did

23 ³ The second secret settlement agreement was entered into
24 by the settling plaintiffs, including Armstrong, and their
25 attorney, Flynn. The egregious conflicts between the plaintiffs
26 and Flynn, and between plaintiffs themselves, are readily apparent
27 from the face of the document. Notwithstanding these facts, the
28 document has only one fleeting reference to consultation with
outside counsel. All of these people, including their attorney,
had been subjected to the most outrageous deprivations, harassment
and intimidation. Each should have been separately represented in
the settlement. None were.

1 not advise Armstrong that he had agreed not to represent Armstrong
2 in the future against Scientology. (Separate Statement No. 5)

3 Moreover, concerning Armstrong's settlement, attorney Flynn
4 even had a separate side-deal with the Scientology lawyers. If as
5 a result of the settlement term that Armstrong would not oppose
6 any appeal of the Breckenridge Decision, there was a reversal,
7 damages on retrial against Armstrong would be limited to \$25,001
8 payment for which Scientology would indemnify Flynn. This was
9 never disclosed to Armstrong. Additionally, Flynn told Armstrong
10 that he would represent Armstrong in the future against
11 Scientology, if necessary. (Defendant Ex. 1 at ¶ 14, Exs. (B) &
12 (C))

13 Flynn also represented a number of other Scientologists who
14 not only also settled with Scientology, but who also settled among
15 themselves in a second agreement because a lump sum of money had
16 been given to Flynn. In that second settlement agreement the
17 parties acknowledged that they had "been subjected to intense, and
18 prolonged harassment by the Church of Scientology throughout the
19 litigation, and that the value of the respective claims stated
20 therein is measured in part by the length and degree of
21 harassment." (Plaintiff's Ex. D, Ex. B thereto)

22 The second secret settlement agreement was entered into by
23 the settling plaintiffs, including Armstrong, and their attorney,
24 Flynn. The egregious conflicts between the plaintiffs and Flynn,
25 and between plaintiffs themselves, are readily apparent from the
26 face of the document. Notwithstanding these facts, the document
27 has only one fleeting reference to consultation with outside
28 counsel. All of these people, including their attorney, had been

1 subjected to the most outrageous deprivations, harassment and
2 intimidation. Each should have been separately represented in the
3 settlement. None were.

4 Indeed, concerning Armstrong's settlement, attorney Flynn
5 even had a separate side-deal with the Scientology lawyers. If as
6 a result of the settlement term that Armstrong would not oppose
7 any appeal of the Breckenridge Decision, there was a reversal,
8 damages on retrial against Armstrong would be limited to \$25,001
9 payment for which Scientology would indemnify Flynn. This was
10 never disclosed to Armstrong. Additionally, Flynn told Armstrong
11 that he would represent Armstrong in the future against
12 Scientology, if necessary.

13 The global settlement, and side-agreements, included Flynn,
14 Armstrong's own attorney who had interests diametrically opposed
15 to those of Armstrong and interests diametrically opposed to those
16 of the other settling former Scientologists. Finally, all of the
17 settling parties had interests that were diametrically opposed as
18 among themselves. Each of them, including Flynn, should have been
19 separately represented. Objectively, none of these settling
20 former Scientologists were capable of representing themselves in
21 this situation. They each required legal counsel with undivided
22 loyalty. What they got, however, was legal counsel who had
23 conflicts between each of his clients and between himself and his
24 clients. Flynn breached all applicable ethical rules in
25 representing himself and all of the settling parties in this
26 global agreement. It was a mammoth conflict of interest for
27 Michael Flynn to represent each of the settling parties in a
28 settlement in which he himself was the largest beneficiary.

1 Clearly, Armstrong entered the settlement without the benefit
2 of objective counsel.

3 **IV. CONCLUSION**

4 Based on the foregoing facts and argument, defendant
5 respectfully submits that plaintiff's motion for summary
6 adjudication should be denied.

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DATED: January 13, 1995

~~HUB LAW OFFICES~~


By: _____
FORD GREENE
Attorney for Defendants
GERALD ARMSTRONG and THE
GERALD ARMSTRONG CORP.

PROOF OF SERVICE

I am employed in the county of Marin, State of California. I am over the age of eighteen years and not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California 94960. I served the foregoing document(s) described as:

**DEFENDANTS' OPPOSITION TO MOTION FOR SUMMARY
ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF
ACTION; ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND
UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY
ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES
OF ACTION OF SECOND AMENDED COMPLAINT; ARMSTRONG'S
EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY
ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES
OF ACTION (VOLS I AND II); ARMSTRONG'S REQUEST FOR
JUDICIAL NOTICE IN OPPOSITION TO MOTION FOR SUMMARY
ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES
OF ACTION**

on the following persons on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Laurie J. Bartilson, Esquire
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, CA 90028

MAIL

Michael L. Walton, Esquire
P.O. Box 751
San Anselmo, CA 94979

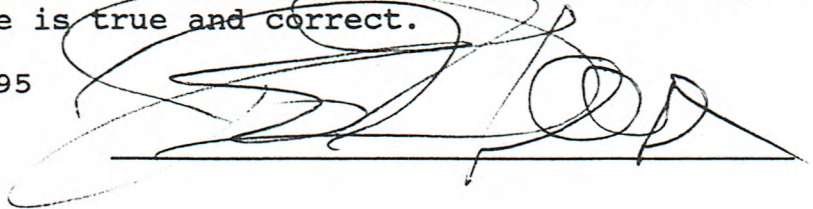
MAIL

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally served on the office of counsel.

/
[X] (State)

I declare under the penalty of perjury under
the laws of the ~~State of California~~ that the
above is true and correct.

DATED: January 13, 1995

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned over a horizontal line.